Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Report to Congress Regarding	)	IB Docket No. 07-50
The ORBIT Act	)	

COMMENTS OF INMARSAT PLC

Inmarsat plc (formerly Inmarsat Group Holdings Limited) ("Inmarsat") submits these Comments in response to the Public Notice inviting input to be reflected in the Commission's progress report to Congress on implementing the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act").[1]

I. INMARSAT HAS SATISFIED ITS ORBIT ACT REQUIREMENTS, BUT RESTRICTIONS IMPOSED BY FORMER SIGNATORIES REMAIN

The purpose of the ORBIT Act is to "promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing . . . INTELSAT and Inmarsat."[2] While Inmarsat has made significant strides in achieving this goal, certain contractual restrictions imposed on it by former Signatories prevent the legislative goal of a "fully competitive global market for satellite communications services" from being fully realized until April 2009 – and the currently proposed consolidation of the mobile satellite service ("MSS") businesses of Telenor Satellite Services ("Telenor") and FTMSC ("France Telecom") threatens to hinder this goal even further in the meantime.

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1 Public Notice, Report No. SPB-218, DA 07-1371 (rel. Mar. 22, 2007).

2 *Id.* at 1; *see also* ORBIT Act, Pub. L. No. 106-180, 114 Stat 48, § 2 (2000).

Inmarsat converted from an intergovernmental organization ("IGO") to a private company in 1999 in a manner that was ORBIT Act-compliant.[3] In June 2005, the Commission found that Inmarsat had satisfied the requirement to effectuate a substantial dilution of former Signatory financial interests in the company.[4] Just days later, Inmarsat reduced former signatory and foreign government ownership even further, by completing one of the most successful equity IPOs by a satellite services company. Today, Inmarsat's shares are traded on the London Stock Exchange, no shareholder holds more than 10% of the company's stock, no former Inmarsat Signatory owns five percent or more of the company, and the aggregate ownership by foreign governments is nominal.

There are, however, certain vestiges of Inmarsat's former IGO structure that remain despite Inmarsat's successful privatization and satisfaction of specific ORBIT Act criteria. Virtually all of Inmarsat's business must continue to be provided under an anachronistic distribution structure left over from its pre-privatization days, under which a limited number of "gatekeepers" have the ability to provide Inmarsat services directly to end users. The perpetuation of that structure was mandated by former Signatories (including Telenor, COMSAT, and France Telecom) as part of the Inmarsat privatization process in order to preserve their historical exclusivity. These restrictions persist today in the form of contractual limitations in the distribution agreements on an Inmarsat subsidiary, Inmarsat Global Ltd., and are not scheduled to expire until April 2009.

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[3] *See Comsat Corp. d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661 (2001) ("*Comsat*").

[4] *Inmarsat Group Holdings Limited, Petition for Declaratory Ruling Pursuant to Section 621(5)(F) of the ORBIT Act*, 20 FCC Rcd 11366 (2005).

A. The Pending Consolidation of the France Telecom and Telenor MSS Businesses Presents Significant Issues

Due to recent consolidation among Inmarsat distributors, today, only three distributors remain who offer the full suite of Inmarsat services on a global basis: France Telecom, Telenor, and Stratos Global Corporation ("Stratos"). Inceptum (an entity controlled by Apax Partners S.A.) recently acquired the France Telecom MSS business, and has proposed to acquire Telenor and place those two global Inmarsat distributors under common control.[5] Those two distributors are responsible for approximately 40% of all Inmarsat services worldwide.

As Inmarsat explained in commenting on Inceptum/Apax's proposed combination of the Telenor MSS business with the former France Telecom MSS business,[6] that horizontal consolidation is inconsistent with the goal of the ORBIT Act to "promote a fully competitive global market for satellite communications services."[7] As detailed more fully in that proceeding, reducing to *two* the number of gatekeepers who have the ability to provide the full suite of Inmarsat services globally is likely to result in U.S. businesses, state, local and federal governments, and the U.S. military alike having fewer competitive choices available to them.[8]

The origin of the problem is the distribution structure created by former Signatories in an effort to preserve their exclusivity. Historically, Inmarsat was established as a global "wholesaler" of MSS to Signatories in various countries who had exclusive rights to "land" Inmarsat services, and then resell them. To this day, the end users of Inmarsat services

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5 *See* Telenor ASA, Transferor and Inceptum 1 AS, Transferee, File No. SES-T/C-20061129-02062 (filed Nov. 11, 2006); MobSat S.A.S. and FTMSC US, LLC, File No. SES-AMD-20060804-01315 (filed Aug. 8, 2006).

6 *See* Comments of Inmarsat plc, Telenor ASA, Transferor and Inceptum 1 AS, Transferee, IB Docket No. 06-225, DA 06-2565 (filed January 22, 2007).

7 ORBIT Act, 114 Stat 48, § 2.

8 Comments of Inmarsat plc, IB Docket No. 06-225, at 2.

are still required to purchase Inmarsat offerings through a controlled distribution network. These restrictions may have made sense at a time when Signatories both owned and controlled Inmarsat, and contributed to the capital costs of developing a multi-billion dollar satellite network. But in a world where Inmarsat has been fully privatized and operates as an independent, publicly-traded commercial enterprise, more flexibility in the operation of that distribution network would enhance competitive choices for Inmarsat's MSS offerings.

Yet the distribution requirements imposed by former Signatories continue to provide their MSS businesses with special privileges and artificial protection from competition.[9] Specifically, Inmarsat is forced to sell services through an elite club of middleman distributors who impose a markup on resellers and on end users. In the case of "traditional" Inmarsat services,[10] entry into this "club" of distributors is effectively restricted to entities that were part of the Inmarsat distribution structure at the time of privatization. This means that distribution rights to services comprising over 90% of Inmarsat's revenues still lie with businesses established by former Signatories.

Although Inmarsat technically has the right to appoint additional distributors for its services, this right is severely constrained by significant artificial barriers to entry, many of which are dictated by the exclusivity arrangements imposed by the former Signatories. Any

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[9] The policy concerns raised by the Inceptum/Apax transaction have their basis in longstanding Commission policy and the ORBIT Act, rather than those present more generally in a merger analysis. Inmarsat is not advocating, and does not believe there is, any separate "market" for Inmarsat MSS services.

[10] By "traditional," Inmarsat means the types of mobile voice and data services that Inmarsat historically provided before the launch of its new generation of spacecraft, and on which hundreds of thousands of end-users have invested significant sums in terminal and network equipment. This term does not include the new generation of "BGAN" land-mobile services, or the forthcoming BGAN aeronautical and maritime services that Inmarsat is still developing, each of which requires different terminals than the installed base of end-user equipment used for traditional Inmarsat services, such as the terminals already installed on large numbers of ships and planes.

potential new distributor of these traditional services must invest in the construction and operation of an expensive gateway earth station facility that "lands" these services, and also must meet a number of other threshold qualification criteria. To be qualified, an entity may not do what is common in the telecommunications industry and simply contract for access to an existing gateway. As a result, in the eight years since Inmarsat was converted from an IGO to a commercial enterprise, Inmarsat has not been able to appoint a single new distributor for its traditional services. And even when Inmarsat has sought to appoint distributors for other, new services provided over the I-4 network, it has faced legal challenges from its long-standing distributors, including Telenor and France Telecom, who seek to maintain their exclusive province over Inmarsat service distribution.[11] Only those distributors who benefit from this archaic "middleman" structure, including Telenor and France Telecom, have the ability to lift this restriction. And Inceptum/Apax seeks to control two of those distributors.

B. The Proposed Stratos Transaction Facilitates the Continued Operation of Stratos as an Independent Distributor and Preserves Future Options

A separate transaction has recently been proposed relating to the other major distributor of Inmarsat services, Stratos. That transaction would facilitate the continued operation of Stratos as an independent provider of Inmarsat services, and at the same time preserve the option for Inmarsat to indirectly acquire Stratos when the contractual restrictions in Inmarsat's current distribution agreements expire in April 2009.[12] Stratos and a Trustee are seeking Commission consent to the indirect transfer of control of Stratos' FCC-licensed subsidiaries from the current Stratos public shareholders to an irrevocable trust. The Trust has

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[11] For example, Inmarsat recently appointed one of its longstanding manufacturers, Thrane & Thrane, as a distributor of its new BGAN services. Existing Inmarsat distributors, including Telenor and France Telecom, initiated legal challenges to that appointment.

[12] Stratos Global Corp., Consolidated Application for Consent to Transfer Control, File No. SES-T/C-INTR2007-00820 et al., (filed April 4, 2007).

been established by CIP Canada Investment Inc. ("CIP Canada"), a subsidiary of Communications Investment Partners Limited, a professional investment company. The Trustee will hold title to the Stratos shares, and will exercise full voting authority over the shares for the life of the trust. The proposed transaction will be indirectly financed by Inmarsat Finance III Limited ("Inmarsat Finance"), a wholly-owned subsidiary of Inmarsat, and Inmarsat Finance will hold a call option exercisable once the contractual restrictions expire. The proposed transaction offers the public interest benefits recognized by the Commission in other "going private" transactions.[13] It will afford the Stratos public shareholders an opportunity to receive a fair price for their shares, and enable Stratos management to maintain its ability to operate and expand the Stratos business in the best interests of the company and its customers.

Should Inmarsat Finance choose, in the future, to exercise its call option, the vertical integration of Inmarsat with one of its distributors, Stratos, would also provide significant public interest benefits, consistent with the competitive goals of the ORBIT Act. As the Commission has previously recognized, vertical integration "can reduce transaction costs, limit free-riding by internalizing incentives, and take advantage of technological economies."[14] Moreover, "vertical integration may reduce prices in the downstream market."[15] On the other hand, if CIP Canada ultimately were to acquire control over Stratos, the transaction would provide the infusion of management expertise that would benefit Stratos and its customers, and place control of Stratos in the hands of an independent entity that has no ties to the business of any former Signatory. In the meantime, the Commission and the public will be assured that

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[13] *See, e.g., Hughes Network Systems, Ltd.*, 20 FCC Rcd 8080 (2005).

[14] *SBC Communications, Inc and AT&T Corp.*, 20 FCC Rcd 18290, 18387, ¶ 190 (2006.)

[15] *Id.*

further consolidation of the Inmarsat distribution network will not occur while the contractual restrictions remain.

II. INMARSAT PROMOTES ECONOMIC GROWTH THROUGH INNOVATIVE SERVICE OFFERINGS

Notwithstanding the challenges faced by Inmarsat discussed above, Inmarsat continues to provide innovative services to a growing number of government and commercial users in the United States and around the world. In granting United States market access to the Inmarsat MSS system in 2001, the Commission determined that the presence of Inmarsat in the United States market "serve[s] the public interest by increasing competition and providing additional services for U.S. consumers."[16] Examples of the users who rely on Inmarsat for their critical communications needs include: the U.S. military, the Department of Homeland Security (including the Federal Emergency Management Agency (FEMA) and the Coast Guard), U.S. Executive Branch and Congressional officials, the New York City Fire Department, CNN, ABC, CBS, National Public Radio, the Red Cross, and nearly every major airline and shipping line throughout the world. Inmarsat continues to expand its capabilities and service offerings, and has invested more than $1.5 billion in the deployment of the new Inmarsat 4 ("I-4") satellite network, which provides innovative MSS services on one of the most advanced commercial communications satellite fleets in orbit. Two of the I-4 satellites have already been launched and are providing service, including one serving the United States, and Inmarsat has announced that the third I-4 satellite, which is fully constructed and tested, will be launched as soon as launch arrangements can be finalized.

Inmarsat's Broadband Global Area Network ("BGAN") service, which operates on the I-4 network, provides voice and broadband service at speeds of almost half a megabit per

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[16] *Comsat*, 16 FCC Rcd at 21661, ¶ 1.

second, and uses highly portable and easily deployed "notebook sized" user terminals that are one-third the size, weight, and price of traditional Inmarsat terminals. In addition to its advanced capabilities, BGAN is also easy to set up and use. After plugging a BGAN terminal into any laptop computer with a standard USB cable (or using a Bluetooth or Wi-Fi connection), mobile users of all types have immediate voice and data connectivity regardless of the state of the terrestrial network.

Inmarsat continues to enhance the flexibility and mobility of its services. In September 2006, Inmarsat announced a collaboration with ACeS International Limited ("ACeS"), the leading Asian hand-held voice services operator, to offer low-cost hand-held and fixed voice services, initially in the Asian market in mid-2007. These hand-held voice services are planned to be provided in the United States using the I-4 network in late 2008.

Inmarsat services also promote economic growth and job development in the United States. For example, the Deere Company uses Inmarsat's satellite communications for its precision farming services. United States flag vessels have integrated Inmarsat communications into ship operations and to provide crew calling. The Vessel Monitoring System that industry and government rely on to manage the sustainability of fisheries by tracking commercial fishing vessels and enforcing fishing regulations uses Inmarsat's satellite network. Portable Inmarsat terminals are used in remote regions around the world by American companies engaged in energy and mining exploration and construction projects, and by journalists for digital news gatherings. Finally, Inmarsat continues to work with dozens of service distributors, equipment suppliers, and application developers across the United States, each of whose participation in the Inmarsat program produces jobs and stimulates new economic growth opportunities.

Inmarsat faces substantial competition from a broad array of technologies, including those which are terrestrially based. On the satellite side alone, global and regional MSS competitors to Inmarsat include Iridium, Globalstar, MSV, Telecomunicaciones de Mexico, Informcosmos, Thuraya, ACeS, Optus MobileSat, INSAT 3C, and N-Star. Additional regional competition will be provided by ICO and TerreStar, whose 2 GHz MSS systems will serve the United States after they meet their 2007 launch milestones. Numerous distributors add to the competitive nature of this market as they compete against one another to offer MSS directly to end users.

The fixed satellite services ("FSS") industry is also a growing source of competition to MSS providers. FSS spectrum can increasingly be used to provide mobile and transportable offerings in addition to the traditional fixed services. With spectrum deregulation and advances in antenna technology, FSS providers are able to provide many of the services that once were provided on a broad scale only by MSS providers, and small FSS VSAT terminals in fact are now being deployed on ships and airplanes to provide voice and broadband connectivity to both passengers and crews.[17] The increasing competition from the FSS industry highlights the need to ensure that regulatory classifications do not unduly constrain MSS providers from serving "fixed" points, and to ensure that MSS providers have access to adequate spectrum for increasingly bandwidth-intensive MSS offerings.

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[17] *See, e.g., The Boeing Company*, 16 FCC Rcd 22645 (2001).

Inmarsat respectfully submits the above information to assist the Commission in preparing its forthcoming report to Congress.

/s/

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